

## **REMARKS**

### **A. Background**

Claims 1-8 and 10 were pending in the application at the time of the Office Action. Claims 4 and 8 were objected to based on formal matters. Claims 1-8 and 10 were rejected as being obvious over cited art. By this response Applicant has amended claims 1-8 and 10, and added new claims 11-13. Claims 1-8 and 10-13 are presented for the Examiner's consideration in light of the following remarks.

### **B. Proposed Amendments**

Applicant has herein amended claims 1-8 and 10 to further clarify, more clearly define, and/or broaden the claimed inventions to expedite receiving a notice of allowance. Specifically, claims 4 and 8 have been amended to remedy formal matters addressed in the Office Action and discussed below. In addition, claims 1-8 and 10 have been amended to clarify claim language and to be written in a format more conventional to U.S. patent practice. Applicant has also herein added new claims 11-13. Applicant submits that new claims 11-13 are supported in the specification as originally filed. In view of the foregoing, Applicant respectfully submits that the amendments to the claims do not introduce new matter and entry thereof is respectfully requested.

### **C. Objections**

Paragraphs 1 and 2 of the Office Action object to the specification based on formal matters. Specifically, the Office Action objects to a referenced U.S. patent number and to reference to specific claim numbers in the specification. Applicant has amended the

specification to correct the inadvertent error in the referenced patent number and to remove references to specific claim numbers. In view of this, Applicant respectfully submits that the objections to the specification have been overcome and should be withdrawn.

Paragraphs 3 and 4 of the Office Action object to claims 4 and 8 based on formal matters. In view of amendments made herein to claims 4 and 8, Applicant respectfully submits that the objections to the claims have been overcome and should be withdrawn.

**D. Obviousness Rejections**

**1. Claims 1-4**

Paragraphs 5-11 of the Office Action reject claims 1-4 under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 3,955,020 to Cavanagh (“*Cavanagh*”) in view of what the examiner considers obvious to one of skill in the art. Applicant respectfully traverses this rejection and submits that a *prima facie* case of obviousness has not been established regarding rejected claims 1-4 because a proper motivation to modify the purported teachings of the cited reference has not been sufficiently demonstrated, and because it has not been sufficiently established that the teachings of the cited reference, when modified in the allegedly obvious manner, includes all the claim limitations. Of the rejected claims, claim 1 is the sole independent claim.

*Cavanagh* discloses a glass container such as a beverage bottle 1, having a straight (i.e. cylindrical) section 7 which is covered by a plastic laminate 2 to protect the bottle from abrasive forces, to provide decoration, and to prevent the scattering of pieces of the glass container should it be broken. See Abstract. *Cavanagh* further discloses that the non-cylindrical sections of the

bottle, i.e., the shoulder 3 and the heel, are also covered by plastic films 4 and 10 “to provide more complete protection of the glass bottle.” Col. 3, lines 39-40 and 51-61.

The plastic laminate 2 that covers the straight section 7 of the bottle consists of two layers - an inner lamina 31 and an outer lamina 32 - with a graphic design 33 applied to the inner surface of the outer layer 32. See col. 4, lines 41-46. *Cavanagh* discloses that the inner lamina 31 “is opacified in order to render more attractive the graphic design which appears above it.” Col. 2, lines 1-3.

In contrast, the materials that *Cavanagh* suggests for the plastic films 4 and 10 that cover the shoulder 3 and the heel are materials that are preferably used in food packaging because of their clarity and transparency. For example, *Cavanagh* discloses that “[a] particularly desirable film for the cup 10 and cone 4 is ... [made from] SURLYN.” Col. 4, lines 4-6. SURLYN is a material from DUPONT that is widely used in the food packaging industry because of its outstanding clarity and transparency. As such, while the lamina 31 that covers the straight section 7 of the bottle is opaque, the other sections of the bottle are desired to be clear. This makes sense because it is typically desirable to be able to see the contents of the liquid that is within a beverage bottle.

The Office Action asserts that *Cavanagh* discloses most of the limitations of the rejected claims but concedes that *Cavanagh* “is silent regarding the plastic layer covering the entire bottle.” The Office Action then asserts that *Cavanagh* teaches “that the plastic layers cover the entire straight portion of the bottle, but that further protection to the heel and shoulders can be added.” The Office Action concludes that “[i]t would have been well within the ability of one of ordinary skill in the art ... to extend the plastic layers to cover these portions of the bottle.

Applicant respectfully disagrees with the rationale set forth in the rejection. As noted above, *Cavanagh* already discloses plastic films 4 and 10 covering the shoulder and the heel of the bottle to provide more complete protection of the glass bottle. As such, Applicant submits that there is no motivation to add an additional film to further cover those sections. Doing so would simply add additional cost and complexity to *Cavanagh*, without adding any additional benefits.

Furthermore, as noted above, the plastic films that are used to cover the shoulder and the heel of the bottle are transparent so that the user can see what is contained in the bottle. As such, applicant submits that it would not be obvious to modify those plastic films so as to be opaque, as this would prevent the user from seeing what was in the bottle. This is an important consideration in the food packaging industry and would thus be undesirable in the packaging of beverage bottles.

In addition, Applicant submits that even if, *arguendo*, the *Cavanagh* apparatus was modified so that the opaque lamina used in the cylindrical section were somehow extended to cover the entire bottle, the modified apparatus would still not include all of the limitations recited in claim 1. As noted above, the lamina 31 that is used in the cylindrical section 7 is disclosed as being completely opaque. As such, Applicant submits that the modified *Cavanagh* apparatus would not include a jacket wherein “**it can be determined whether in the container there are solid particles or a liquid or a liquid with still undissolved particles but not what the actual colour of the contents is,**” as recited in claim 1. This limitation provides unique benefits that are not taught in the art. For example, as noted in the specification, the above limitation allows for the safe administration of liquid or freeze-dried galenic formulations in blind clinical trials without compromising the anonymity/blinding requirements of such trials. For instance, a doctor

can see when undissolved particles remain in a liquid in the container and thus can know when further dissolving is required, but cannot distinguish between the contents of different containers. And, as noted above, it would not be obvious to modify *Cavanagh* to include this limitation as one would desire to see what is in a beverage bottle.

In view of the foregoing discussion, Applicant submits that claim 1 is distinguished over the *Cavanagh* apparatus as modified in the allegedly obvious manner set forth in the Office Action. Claims 2-4 depend from claim 1 and thus incorporate the limitations thereof. As such, Applicant submits that claims 2-4 are also distinguished over the modified *Cavanagh* apparatus.

In light of the foregoing, Applicant respectfully submits that the Office Action has failed to establish a *prima facie* case of obviousness with respect to claims 1-4 at least because the Office Action has not established that it would have been obvious to make the suggested modification to *Cavanagh* and because the Office Action has not established that the reference, when modified in the allegedly obvious manner, teaches or suggests all the limitations of claims 1-4. Accordingly, Applicant respectfully requests that the obviousness rejection of claims 1-4 be withdrawn.

## 2. Claims 5-8 and 10

Paragraphs 12-19 of the Office Action reject claims 5-8 and 10 under 35 USC § 103(a) as being unpatentable over *Cavanagh* in view of U.S. Patent No. 5,525,383 to Witkowski (“*Witkowski*”). Applicant respectfully traverses this rejection and submits that even if combined, the cited references would not include all of the limitations recited in the rejected claims.

*Witkowski* is directed to a food container, such as a drinking glass, that has a rotatable tubular sleeve attached thereto. The tubular sleeve is mounted over an image that is affixed to

the outer surface of the container. When the sleeve is rotated about the container, moving or animated transitory images are viewed by the user. See Abstract. *Witkowski* discloses various embodiments of the sleeve S. See, e.g., Figs. 12, 15, 18, 21, and 24. However all of the disclosed sleeves S consist of a single substantially rectangularly shaped piece of plastic that is curled into a cylinder around the container and the adjacent edges are bonded together with an adhesive or an adhesive strip. See, e.g., col. 7, lines 45-46 and col. 8, lines 35-37.

In the Office Action the examiner asserts that “Figure 24 shows an image where two half shells are seen around the container, ... that the half shells can be closed by tape, ...[and that] it is obvious ... that when taped together the tape section of the half shells can act as a hinge.” Applicant respectfully disagrees.

In the description of shell S shown in Figure 24, *Witkowski* discloses that “The sheet forming the sleeve S is rectangular in shape and is wrapped by the user ... around the drinking glass 50,” where the aligned vertical edges 68 and 70 are taped or otherwise adhered together. Col. 9, lines 26-30, emphasis added. *Witkowski* further discloses that shell S is “similar to that described in Figures 12 and 15,” which are also disclosed as being formed from a single rectangular sheet of material that is curled into a cylinder. Col. 9, lines 25 and 26; see also col. 7, lines 41-46 and col. 8, lines 35-37.

Thus, contrary to the assertion of the Examiner, Figure 24 of *Witkowski* does not depict “two half shells,” but instead simply shows opposite ends 68 and 70 of the same single sheet of plastic S. Furthermore, Applicant can find no other portions of *Witkowski* that teach “two half shells.” As such, Applicant submits that *Witkowski* fails to disclose or suggest a “synthetic material jacket [that] comprises two half shells,” as recited in claim 5.

Furthermore, as shown in Figure 25 of *Witkowski*, when sheet S is formed into a cylinder, the sheet fits snugly around glass 50. As a result, the taped edges 68 and 70 of sheet S are smooth and do not hinge. Thus, Applicant submits that *Witkowski* also fails to disclose or suggest any portion of a jacket that is “**connected hingedly to one another**,” as recited in claim 5.

Claims 6-8 depend from claim 5 and thus incorporate the limitations thereof. As such, Applicant submits that claims 6-8 are also distinguished over the cited art for at least the same reasons as discussed above with regard to claim 5.

Furthermore, claims 5-8 depend from claim 1 and thus incorporate the limitations thereof. Applicant submits that *Witkowski* does not cure the deficiencies of *Cavanagh* as discussed above. As such, Applicant submits that claims 5-8 are also patentable over the cited art for at least the same reasons as discussed above with regard to claim 1.

Regarding rejected claim 10, Applicant respectfully submits that claim 10 is differentiated over the cited art for substantially the same reasons as given above regarding claim 1. That is, neither *Cavanagh* nor *Witkowski* teach or suggest a jacket “**covering the entire container wall**,” wherein “**it can be determined whether in the container there are solid particles or a liquid or a liquid with still undissolved particles but not what the actual colour of the contents is**,” as recited in claim 10.

In view of the foregoing discussion, Applicant submits that a *prima facie* case of obviousness has not been established regarding claims 5-8 and 10 at least because the allegedly obvious combination of *Cavanagh* and *Witkowski* would not include all of the limitations recited in the rejected claims. Accordingly, Applicant respectfully requests that the obviousness rejections with respect to claims 5-8 and 10 be withdrawn.

No other objections or rejections are set forth in the Office Action.

E. New Claims

Applicant submits that each of new claims 11-13 is distinguished over the cited art of record. For example, claim 11 recites “wherein the container comprises a vial, an ampoule, or a syringe,” and claim 12 recites “wherein the liquid or freeze-dried galenic formulation comprises a medicine.” As noted above, both *Cavanagh* and *Witkowski* are directed to food products and would thus not be used for medical purposes. Claim 13 recites “wherein the safety sealing tape completely encircles the container.” Applicant submits that none of the cited references teach or suggest this limitation either.

Furthermore, claims 11-13 depend from independent claim 1 and thus incorporate the limitations thereof. As such, Applicant submits that claims 11-13 are also distinguished over the cited art for at least the same reasons as discussed above with regard to claim 1.

F. Conclusion

Applicant notes that this response does not discuss every reason why the claims of the present application are distinguished over the cited art. Most notably, applicant submits that many if not all of the dependent claims are independently distinguishable over the cited art. Applicant has merely submitted those arguments which it considers sufficient to clearly distinguish the claims over the cited art.

In view of the foregoing, applicant respectfully requests the Examiner’s reconsideration and allowance of claims 1-8 and 10-13 as amended and presented herein.

In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Dated this 10th day of April 2008.

Respectfully submitted,

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